

follows:

"For example, the control information can indicate that the disk is a CD and the inputs stored in the read/write portion thereof indicate a playback program or that the disk is a CD-ROM game and the information stored in the read/write part thereof is indicative of the ending game position."

The term *control information* as used at col. 6, line 34, and as used in the previous sentence at col. 6, line 31, does not refer to information included on the disk as asserted by the Examiner, but as disclosed at col. 6, lines 21-22, refers to information to be kept on RAM 410B of an apparatus shown in FIG. 4.

Although Tognazzini discloses at col. 5, line 60-62, that the apparatus of FIG. 4 reads the disk to determine if the disk is a hybrid disk, there is no indication that the disk comprises "a first recording surface having identification information expressing a disc type, recorded in a predetermined recording area, said first recording surface being formed at a first interval below said label printed surface," as claimed in claim 1, that the disc is a hybrid disc "wherein said predetermined recording area is a file which is generally not used, a sector which is predetermined, or a TOC (table of contents)" as claimed in claim 3 or that the disc comprises "a first recording surface formed at a first level in said substrate, said first recording surface including a first format type of reproduction data and a predetermined recording area having identification information indicating that the hybrid disc is a hybrid disc type" as claimed in claim 19.

Further, the disclosure of Tognazzini teaches away from having a disc type expressed on the disc. If Tognazzini contemplated that the disc type was recorded on the disc, there would be no reason to record the serial number of the disc and the corresponding control information on the RAM 410B of the apparatus so that:

"The control information is used as an index to identify the category of the disk and the format of the inputs or information stored on the read/write parts thereof." See col. 6, lines 31-33.

If the disk 100 of Tognazzini included "a first recording surface having identification information expressing a disc type," it would be unnecessary to store such information on the RAM 410B in association with the disk serial number for later use.

The Examiner appears to be reading Tognazzini in the light of the disclosure of

the present application and concluding that since the apparatus in Tognazzini reads the disk to determine if the disk is a hybrid disk, that Tognazzini must be obtaining such information from "a first recording surface having identification information expressing a disc type" as claimed 1 or from "a predetermined recording area having identification information indicating that the hybrid disc is a hybrid disc type" as claimed in claim 19.

Applicant submits that such a reading of Tognazzini is erroneous and constitutes hindsight analysis which is not permissible.

The present invention must be viewed in light of the problems with which the inventor was solving at the time the invention was made, namely, irradiating a recordable CD surface of a hybrid disk with a laser emitting a frequency intended for irradiating a DVD surface can result in damage to the CD surface. Applicant's improved hybrid disk, as claimed in claims 1-3, 19, 23 and 24 provide a simple but reliable solution to this problem.

Claim 2 is deemed to be patentable at least for similar reasons set forth above regarding claim 1.

Claims 23 and 24 are deemed to be patentable at least for similar reasons set forth above regarding claim 19.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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